The opinion of the Attorney General follows:

Attorney General's Department,
Austin, Texas, March 8, 1913.

Sir: You have submitted to us for construction the appropriation made for the Attorney General's Department at the First Called Session of the Thirty-second Legislature, which appropriation appears on pages 17 and 18 of the official publication of the laws passed by that Legislature.

There is now remaining on hand unexpended in the Treasury something like one thousand dollars of this appropriation, and the question is, whether or not this money is available for use by the Attorney General's Department for the year ending August 31, 1913? In all the varied courses which it has been the fate of this appropriation to take through the courts of the land, the question here submitted has not been adjudicated. We are left, therefore, to the ordinary rules of construction to determine whether or not the $41,580 appropriated was appropriated only for use during the year 1912 or whether the balance thereof may be expended during the year 1913. In determining the question, we are also obliged to consider and determine the effect of the Governor's veto as made to the original bill itself. This naturally involved, of course, a history of, and the effect of, the qualified negative, which a Chief Executive has under our Constitution.

The Status of the Veto Power.

In the convention which framed the Constitution of the United States, there does not appear to have been any difference of opinion as to the propriety of giving the President a negative on laws enacted by Congress. The principal subject which seems to have been discussed was as to whether or not the negative should be absolute or qualified, and what number of votes should be necessary to pass the measure over the Executive disapproval. During the progress of this particular section in the constitutional convention, which framed the organic law of the United States, it was first placed in the section that it took an affirmative vote of two-thirds of the members of each House to pass the measure over the Executive veto. Subsequent to this, however, it was changed to three-fourths, but ultimately it was established as we now find it in the Constitution, which requires two-thirds of the members of each House to pass a vetoed measure over the veto. (Storey on Constitution, Sec. 881.)

Inasmuch as the veto of the Chief Executive is only a qualified negative, and a law may be passed, notwithstanding the Executive disapproval, it appears that the veto within itself is rather in the nature of a mere appeal to the Legislature and a suggestion to that body for a revision of its own judgment. In other words, the effect of a veto is a motion for reconsideration upon the part of the Chief Executive, which, if overruled by a sufficient number of members of each House, the measure becomes the law, notwithstanding the Executive dis-

approval. (Storey on Constitution, Sec. 888.)

It appears from the foregoing that in the approval or disapproval of laws the Governor is a component part of the Legislature and that his act in vetoing a measure is purely a legislative act.

Cooley on Constitutional Limitations, p. 184.

Fulmore vs. Lane, 140 S. W., 412.

Rules of Construction.

It will appear from the foregoing that, in construing the veto of the Governor, we must construe it in the same manner and with the same purpose in view that we would a legislative act.

The following is a statement of the rules of construction which has been repeatedly approved by the Supreme Court of Texas, the rules referred to being stated briefly as follows:

"Among the most important of these rules are the maxims that the intention of the Legislature is to be deduced from the whole and every part of a statute, when considered and compared together; that the real intention, when ascertained, will prevail over the literal import of the terms; and that the reason and intent of the legislator will control the strict letter of the law, when the latter would lead to palpable injustice, contradiction and absurdity; that when the words are not explicit the intention is to be collected from the occasion and necessity of the law, and from the mischief and objects and remedy in view; and the intention is to be presumed according to what is consonant to reason and good discretion. It is another established rule that all acts in pari materia are to be taken together, as if they were one law, and that if it can be gathered from a subsequent statute, in pari materia, what meaning the Legislature attached to the words of a former statute, this will amount to a legislative declaration of its meaning, and will govern the construction of the first statute.

"These and other rules by which the sages of the law have been guided in seeking for the intention of the lawgiver have been accumulated by the experience, and ratified by the approbation of ages."

Cannon vs. Vaughan, 12 Texas, 399.

Fulmore vs. Lane, 140 S. W., 419.

It is also an elementary rule of construction, and one directly applicable, and which must be observed in this particular instance, that we should not, unless required to do so, give such a construction to the Governor's veto as would necessarily occasion great public and private mischief, but a construction will be preferred which will occasion neither, unless the latter would do violence to a well settled rule of law.

Fulmore vs. Lane, 140 S. W., 419.

"When the meaning of the statute is doubtful, it is proper to recur to the history of the enactment to aid the construction, and, when the words are not explicit, the intention is to be collected from the occasion and necessity of the law and from the mischief and object and remedy in view."

Farmer vs. Shaw, 93 Texas, 438.

Wallraven vs. Farmers' National Bank, 96 Texas, 331.

Ross vs. Terrell, 99 Texas, 502.

"It is indispensable to a correct understanding of a statute to inquire first what is the subject of it, what object is intended to be accomplished by it. When the subject matter is once clearly ascertained and its general intent, a key is found to all its intricacies. General words may be restrained to it and those of narrower import may be extended to express it to effectuate that intent. When the intention can be collected from the statute, words may be modified, altered or supplied so as to obviate any repugnancy or inconsistency with such intention. Thus in the construction of a temporary appropriation act the presumption is that any special provisions of a general character therein contained are intended to be restricted in their operation to the subject matter of the act, and not permanent regulations, unless the intention of making them so is clearly expressed."

(Lewis' Sutherland on Statutory Construction, Sec. 347.)

"The intention of the Legislature being ascertained with reasonable certainty, words may be supplied in the statute so as to give it effect and avoid any repugnancy or inconsistency with such intention."

(Sutherland, Sec. 382; Talbot vs. Silver Bow County, 139 U. S., 438.)

"One Word Substituted for Another.

"The Constitution of Illinois provides for the division of counties into not more than three classes according to population, for the purpose of regulating the compensation of county officers. In 1872 an act was passed concerning fees and salaries, which by Section 13 divided counties into three classes: first, those

having not exceeding 20,000 population; second, those having 20,000 and not exceeding 70,000; third, those exceeding 70,000. Section 33 provided for the fees of the clerk of the Circuit Court 'in counties having a population exceeding 70,000.' In 1883 Section 13 was amended so as to make the classes (1) not exceeding 25,000, (2) 25,000 and not exceeding 100,000, and (3) exceeding 100,000. Section 33 remained unchanged until 1893, when it was amended and reenacted so as to change the fees but continuing the words, 'in counties having a population exceeding 70,000.' This amendment was claimed to be void because it made a fourth class of counties in violation of the Constitution. Section 33 was preceded in the original statute by a subheading as follows: 'Fees and compensation of clerks of courts of record, except in probate matters, in counties of the third class.' It was held, considering the subtitle and the whole act, that Section 33 was intended to apply to counties of the third class and that the words 'one hundred thousand' should be substituted for the words 'seventy thousand' in the section. The court says: 'The title should have its due share of consideration in determining the intention of the Legislature, and clearly shows, when taken in connection with the clause hereinafter referred to, that the Legislature made a mistake, when it passed the amendment of 1893, in not substituting the words 'one hundred' for and in place of the word 'seventy,' so that the first clause in the section should have read: 'in counties having a population exceeding one hundred thousand inhabitants.' It is manifest that the thing within the letter, towit: 'seventy thousand,' is not within the statute because not within the intention, while the thing within the intention, towit: 'one hundred thousand,' is within the statute, though not within the letter."

(Sutherland, Sec. 383; People vs. Gaulter, 149 Ill., 39.)

"Where a word or phrase in a statute would make the clause in which it occurs unintelligible, the word may be eliminated and the clause read without it."

(Sutherland, Sec. 384.)

All the several rules of construction, to which we have made reference, are general and well known rules constantly applied by the courts in the interpretation of laws and written instruments. They are a part of the tools of machinery of those whose duty it is to ascertain the intent and meaning of written laws. They are in fact as much a part of the laws themselves as legislative enactments, and their disregard ordinarily leads to confusion, and a wrong construction of the subject matter under consideration. Of course, the whole purpose of the courts in laying down these rules of construction has been to enable one to understand the meaning and intent of the law under review and the rules should not be used for any other purpose, and in considering the matter before us we should bear in mind that the rules of construction are to be used only for the purpose of determining what was intended by the Legislature.

The Bill as Passed by the Legislature.

We will not undertake to set out in detail the appropriation bill as passed by the Legislature, nor even that particular part of the same which had reference only to the Attorney General's Department, but we will take up in a general way the entire appropriation bill and that part of same making the appropriations for the Attorney General's Department sufficiently to understand the intention and purpose of the Legislature in passing the measure.

In the first place, the Regular Session of the Thirty-second Legislature met in January, 1911, but after remaining in session some two months adjourned without passing a general appropriation bill for the support of the State government for the two years beginning September 1, 1911. Afterwards, in July, 1911, the Governor of the State called the Legislature together in extra session by a proclamation dated Austin, Texas, June 20, 1911, in which he called the Legislature together in special session to meet on Monday, July 31, 1911. In this call the Governor said, among other things:

"An emergency having arisen by reason of the fact that the Regular Session of the Legislature adjourned without making appropriations for the support of the State government and for the public service for the fiscal years beginning September 1, 1911, and September 1, 1912, etc., * * * therefore, an extraordinary session of the Thirty-second Legislature is hereby called, for the date above indicated, for the following purposes, towit: (1) To make appropriations for the support of the State government and for the public service for the fiscal years beginning September 1, 1911, and September 1, 1912. * * *"

Upon the convening of the Legislature

it passed, among other measures, what was known as Free Conference Committee substitute for Senate bill No. 3, which is now Chapter 3 of the General Laws passed by the First Called Session of the Thirty-second Legislature. The caption of this bill is as follows:

"An Act making appropriations for the support of the State government for two years, beginning September 1, 1911, and ending August 31, 1913, and for other purposes, and prescribing certain regulations and restrictions in respect thereto; to make additional appropriations for the support of the State government for the year ending August 31, 1911, and to pay various miscellaneous claims against the State, and declaring an emergency."

In Section 1 of the bill is found the following:

"Section 1. That the following sums of money, or so much thereof as may be necessary, be, and the same are hereby appropriated out of any money in the State Treasury not otherwise appropriated for the support of the State government from September 1, 1911, to August 31, 1913, and for other purposes, etc."

Following the foregoing language in Section 1, after various and sundry provisions, we find the appropriations set out for each of the several departments of the State government. The appropriation for each department throughout the bill is followed by language in substance as follows:

"Provided, that the amounts herein appropriated for each item, as stated herein, and no more, shall be paid out of the general revenue for the..... Department during the fiscal years beginning September 1, 1911, and ending August 31, 1913, and no surplus shall be diverted from one account to another."

The usual method of setting out an appropriation throughout the bill is to establish two columns; at the top of which two columns are the words, "for the years ending," and then before the first column is found "August 31, 1912," and before the second column, "August 31, 1913." Then follows a specification of the various items of each appropriation with the amount for the year under each of the columns aforesaid. The following extract from the appropriation for the executive office will illustrate this arrangement:

Executive Office.

	For the Years Ending Aug. 31, 1912.	Aug. 31, 1913.
Salary of Governor.	$4,000 00	$4,000 00
Salary of private secretary	2,400 00	2,400 00
Salaries of two stenographers	2,400 00	2,400 00
Salary of porter...	480 00	480 00

On page 62 of the appropriation bill referred to is found the following:

"Provided, that any portion of the appropriations made herein for the year ending August 31, 1911, for maintenance and support, the erection, remodeling or equipment, for repairs of buildings, or for any institution of this State for which appropriations have been made herein which remain unexpended at the end of said fiscal year, shall be available, and may be used for the year ending August 31, 1913."

The bill also on the same page provides:

"Provided, that the Governor, in case of any extraordinary emergency, may authorize a deficiency for such purpose or purposes which could not have been anticipated or provided for by the Legislature. This provision shall apply to all State institutions and departments. All money appropriated by this act shall remain in the State Treasury and be paid out only as it is expended or as the necessity or emergency may require, etc."

So it appears conclusively from the above and foregoing extracts of the general appropriation bill that the undoubted purpose of the Legislature was to make an appropriation for the support of the State government for a period of two years. The Attorney General's Department, of course, was one of the departments of the State government and an appropriation having been made for it within the terms of this identical bill, it will be presumed that the Legislature intended also that the appropriation made for that department should be for two years, unless it clearly appears that such was not the intention of the Legislature. This proposition is too plain to merit discussion, but this interpretation is one not only consistent with common sense, but is a conclusion consonant with the rules of construction heretofore invoked by us.

Intention of the Legislature.

Having determined in the preceding

section of this opinion that the general intention of the Legislature was to make an appropriation for the support of the State government for a period of two years, including within this intention the Attorney General's Department, we will now examine the appropriation for that department and see if there is anything within the appropriation itself contrary to the general intention of the Legislature.

The appropriation made for the Attorney General's Department was somewhat different in its arrangement to that made for the other several departments of the State government in this way: That the appropriation was not itemized and embraced sundry directions not ordinarily embraced within one of the departmental appropriations. As originally drawn and passed by the Legislature it was in the following form:

"Attorney General's Department.

"For the support and maintenance of the Attorney General's Department, including postage, stationery, telegrams, telephones, furniture, repairs, express, typewriters and fittings, contingent expenses, costs in civil cases in which the State of Texas or any head of a department is a party; for the actual traveling expenses and hotel bills incurred by the Attorney General or any of his assistants or employes in giving attention to the business of the State elsewhere than in the city of Austin; for depositions and procuring evidence and documents to be used in civil suits or contemplated suits wherein the State is a party; for law books and periodicals; for the payment of any and all expenses incident to and connected with the administration of the duties of the Attorney General's office; for the enforcement of any and all laws, wherein such duty devolves upon the Attorney General; for the payment of any and all expenses in bringing, prosecuting and defending suits; for the payment of the salary and maximum fees provided by the Constitution for the Attorney General, and for the payment of the salaries and compensation of his assistants and employes and other help deemed by the Attorney General to be necessary to carry on the work of the Attorney General's Department, there is hereby appropriated the sum of eighty-three thousand and one hundred and sixty ($83,160) dollars, to be expended during the two fiscal years ending August 31, 1912, and August 31, 1913, to be paid by the Treasurer on warrants drawn by the Comptroller upon vouchers approved by the Attorney General. For the year ending August 31, 1912, $41,580; for the year ending August 31, 1913, $41,580.

"For the guidance of the Attorney General in the expenditure of such sums out of the above item of appropriation of $83,160 as may be necessary to properly conduct the business of his department, he is hereby empowered and authorized to employ such regular assistants as he may deem necessary, not to exceed seven in number at any one time, one of such assistants he shall designate as First Office Assistant Attorney General; and there may be expended out of the above item of appropriation a sum not exceeding $20,000 per annum for the purpose of paying the salary of the Attorney General at $2000 per annum and such fees as are prescribed by law, not to exceed $2000 per annum, and for the purpose of paying the salaries of the assistants employed; provided, that no assistant shall receive more salary than $2500 per annum; and the Attorney General shall have the power and authority to employ such stenographic clerks as he may deem necessary to carry on the work of the department, not to exceed four in number, one of whom shall be chief clerk and bookkeeper; and there may be expended out of the above item of appropriation a sum not to exceed $4000 per annum to pay the salaries of such stenographic clerks, provided, that no stenographic clerk shall receive more than $1300 per annum; there may be employed one porter, who shall be paid out of the above item of appropriation a salary of $480 per annum; there may be expended out of the above item of appropriation, for postage, stationery, telegrams, telephones, furniture, repairs, express, typewriters, and fittings and contingent expenses so much thereof as may be necessary, not to exceed the sum of $1350 per annum. The remainder of the above item of appropriation, or so much thereof as may be deemed necessary by the Attorney General, shall be expended for costs in civil cases in which the State of Texas or any head of a department is a party; for the actual traveling expenses and hotel bills incurred by the Attorney General, or any of his assistants or employes, in giving attention to the business of the State elsewhere than in the city of Austin; for depositions and procuring evidence and documents to be used in civil suits, or contem-

plated suits, wherein the State is a party; for law books and periodicals; and for the enforcement of any and all laws of the State of Texas wherein that duty devolves upon the Attorney General, and for the payment of any and all expenses deemed necessary by the Attorney General in the prosecution and defense of all suits, and particularly for the enforcement of the anti-trust and corporation laws and for the employment of special counsel and other help when the same may be deemed necessary by the Attorney General, provided that the head of said department shall keep a record of the absences of the various employes and the reasons therefor, whether from sickness, vacation or on leave of absence, and that the record of such absence be incorporated in the report made biennially by the head of said department; provided, that the amount herein appropriated as stated herein, and no more, shall be paid out of the general revenue for the Attorney General's Department during the fiscal years beginning September 31, 1911, and ending August 31, 1913; and provided further, that no deficiency shall be created, nor shall any warrants be issued nor obligations incurred in excess of the amounts herein appropriated."

In the foregoing quotation of the original appropriation for the Attorney General's Department we have enclosed with blue pencil, or marked across with a blue pencil, those particular parts of the same which were so crossed out or marked by the Governor in his veto message, but for the purpose of this immediate discussion, we will consider the measure as originally passed by the Legislature, disregarding the veto or crossed out passages of the same.

For the purpose of a clearer discussion, we will disregard a considerable part of the provisions in the first portion of the appropriation and simply put down the essential features of the same, which when done, will determine the meaning of the appropriation with reference to the different items thereof, and when so done, will read as follows:

Attorney General's Department.

"For the support and maintenance of the Attorney General's Department * * * there is hereby appropriated eighty-three thousand and one hundred and sixty ($83,160) dollars, to be expended during the two fiscal years ending August 31, 1912, and August 31, 1913, to be paid by the Treasurer on warrants drawn by the Comptroller upon vouchers approved by the Attorney General. For the year ending August 31, 1912, $41,580; for the year ending August 31, 1913, $41,580."

It is plain from the foregoing that the Legislature intended to appropriate $83,160 for the support and maintenance of the Attorney General's Department for the two years ending August 31, 1912, and August 31, 1913, and that in the expenditure of this money a limitation was placed upon the amount which might be expended each year; that is to say, under the column headed "August 31, 1912," the amount which might be expended was $41,580, and for the year ending "August 31, 1913," the same amount. In other words, it is plain from the foregoing that the figures placed under the year columns were placed there as matters of limitation on the amount which might be expended in any one year. Of course, naturally they were words of appropriation as well, but the previous language, towit: "The sum of $83,160," etc., were words of appropriation and limitation upon the amount which might be spent during the period of two years; but that they were words of appropriation for the two years there can be no reasonable doubt, because the itemized appropriation, as shown above, is followed by a lengthy statement as to the uses to which this sum of $83,160 may be put by the Attorney General, and throughout the discussion of the uses to which it may be put the $83,160 is treated as a single item in the appropriation bill. For instance, the bill stated: "For the guidance of the Attorney General in the expenditure of such sums of money out of the above item of appropriation of $83,160"; * * * "and there may be expended out of the above item of appropriation a sum not exceeding $20,000 per annum," etc. * * * "and there may be expended out of the above item of appropriation a sum not exceeding $4000 per annum," etc. * * * "there may be employed one porter who shall be paid out of the above item of appropriation a salary of $480 per annum"; "there may be expended out of the above item of appropriation for postage, stationery, telegrams, etc., not to exceed the sum of $1350 per annum." etc. "The remainder of the above item of appropriation, or so much thereof as may be deemed necessary by the Attorney General," etc. "The amount herein appropriated, as stated herein, and no more, shall be paid out of the

general revenue for the Attorney General's Department during the fiscal years beginning September 31, 1911, and ending August 31, 1913," etc.

Upon examination, therefore, of the foregoing, it appears that it was the undoubted purpose of the Legislature to make an appropriation of $83,160 for the support of the Attorney General's Department for a period of two years; that in the original measure the Legislature designated this appropriation as one item and throughout the bill so treated it, except that it limited the amount which might be spent during the year 1912, to $41,580 and limited the amount that might be spent during 1913 to $41,580; also that in the directions following the above, various limitations were placed on the amounts which might be expended, as for example, "exceeding $20,000 per annum for the payment of the salary of the Attorney General and his assistants"; "an amount not exceeding $4000 per annum for the payment of the salaries of the stenographic clerks" and "an amount not exceeding $1350 per annum for the payment of contingent expenses, etc." In other words, this bill, as it originally passed the Legislature meant that $83,160 was passed for the support of the Attorney General's Department for a period of two years and that various limitations were placed upon the department in the expenditure of this money. In the first place, the department could not expend exceeding one-half the amount the first year, and one-half the amount the second year, and it could not spend more than certain designated amounts for certain particular purposes in the course of either of the years, but it is clear and definite that there was nothing in this appropriation bill as originally passed by the Legislature which indicated in any manner that the Legislature did not intend to make an appropriation for the support and maintenance of the Attorney General's Department for a period of two years. The entire appropriation for this department is entirely consistent with the declared purpose and intention of the Legislature as expressed in the title of the measure and in the first section of the bill. The title of the act, of course, may be resorted to in aid of the construction of the act.

State vs. Delesdenier, 7 Texas, 76.
Byrnes vs. Sampson, 74 Texas, 79.

The Veto of the Governor.

The general appropriation bill under consideration, after its passage by both houses of the Legislature, was submitted to the Governor of the State for his consideration. The measure was considered by him and when he reached the appropriation for the Attorney General's Department he crossed out those parts of the foregoing copy of the appropriation which we have crossed out with a blue pencil, so that the appropriation when he returned the same to the Legislature read substantially as follows :

"Attorney General's Department.

"For the support and maintenance of the Attorney General's Department, including postage, etc. * * * There is hereby appropriated to be expended during the two fiscal years ending August 31, 1912, and August 31, 1913, to be paid by the Treasurer on warrants drawn by the Comptroller upon vouchers approved by the Attorney General. For the year ending August 31, 1912, $41,580."

The figures "$41,580" were left under the column headed "August 31, 1912." The Governor also crossed out with his pen the directions as to the expenditure of the appropriation for the Attorney General's Department, but the Supreme Court held that this particular part of his veto was void, and therefore of no effect, so when considering the appropriation for the Attorney General's Department, the directions given remain intact and a part of the measure. The Supreme Court, however, held that the Governor's veto, in so far as his erasure of the words "the sum of $83,160" and his erasure of the figures "$41,580" appearing under the column headed August 31, 1913, were concerned, that the veto was valid; that the Governor had a right to make this character of veto and it is not left to us to determine whether or not such right existed. That question has been settled by the Supreme Court of this State.

Fulmore vs. Lane, 140 S. W., 411, 412.

The Intention of the Governor.

Inasmuch as the action of the Governor in making this veto, which the Supreme Court of the State has said that he had a right to make, is a legislative act, we must construe the veto by the same rules of construction that we would an act of the Legislature.

Authorities, supra.

Fulmore vs. Lane, 140 S. W., 412.

The Governor, in the exercise of his constitutional duty, filed with the Legislature his objections to the appropriation bill, specifying his objections to the appropriation for the Attorney General's Department. In his specifications of objections, among other things, he said:

"On page 30 the item in words as follows: 'The sum of $83,160' is objected to and disapproved (1) because it is an excessive appropriation of the public funds for the purposes appropriated at a time when the burden of taxation upon the people of this State must necessarily be increased to supply deficits and pay the necessary expenses of government; (2) because the same is an evasion of the Constitution, etc."

"The item on page 30 of $41,580 for the fiscal year ending August 31, 1913, is objected to and disapproved. The remaining item of $41,580, as appropriated, is available for use until exhausted and may be applied during both of the fiscal years ending August 31, 1912, and August 31, 1913, etc."

(See the Governor's veto message as copied in Fulmore vs. Lane, 140 S. W., 416.)

It is therefore apparent from the foregoing that it was the intention and purpose of the Governor that the $41,580 should be available for both the years 1912 and 1913. In one respect it is not a question of the interpretation put upon the measure passed by the Legislature by the Governor, but it is a specific expression of his own intention in vetoing those parts of the measure vetoed by him. In other words, it is an expression of his intention in performing a legislative act, and as such, it must be considered under the rules heretofore invoked in construing this bill and determining the final result.

Comparison of the Intention of the Legislature and the Governor.

From what we have said heretofore it appears that the Legislature of the State intended to make an appropriation for the Attorney General's Department for a period of two years; that the Governor in performing his legislative function in the exercise of the veto power, intended that the appropriation should be made for a period of two years for the support and maintenance of the Attorney General's Department. It therefore appears that the legislative department and the executive department, in exercising a legislative function, met in entire harmony as to their purpose and intention in enacting the appropriation bill for the Attorney General's Department. It matters not that there may be some ambiguities and contradictions in the appropriation, yet this intention is so manifest that the spirit of the act cannot be disregarded and surrendered to mere words which may have been inserted or left in the bill through inadvertence or mistake. We are not now construing this bill as an original propositon of law, but we are construing the measure after the Supreme Court of this State has definitely settled the question, that the Governor had the right to make the veto which he did make. We are not confronted with the proposition as to whether or not the Governor exercised the veto right in a constitutional way—that feature of the discussion has been settled by the Supreme Court of this State, and the only thing left us to determine is whether or not after the exercise of the veto power by the Governor in a constitutional way, the measure then is still capable of the construction that it was and is applicable to the support of the Attorney General's Department for two years? If it should be held that it is not so, then it is apparent that the Governor by his veto destroyed both his own and the legislative intention in the matter. If he did this, then it was manifestly a mistake and an error on his part, unintended and unintentional, and under the authority we have heretofore cited in Section 383 of Sutherland on Statutory Construction, in which it was held that where a manifest mistake had been made by the Legislature, that the court could supply the mistake, then we think it is conclusive that in this instance any mistake of the Legislature or the Governor in this matter may be rectified by the court and the bill made to read as it was manifestly intended that it should read by both the Legislature and the Governor.

The only thing in this bill which creates any doubt to the intention and purpose of the Legislature and the Governor is that the figures $41,580 were left under the column headed August 31, 1912. If it be considered for a moment that the fact that this was so left is in contradiction of the express terms of the appropriation, towit: to be expended during the two fiscal years ending Au-

gust 31, 1912, and August 31, 1913, then the rule undoubtedly is that the last named feature of the appropriation must control, that is to say, the words "to be expended during the two fiscal years ending August 31, 1912, and August 31, 1913," are found later in the provisions of this particular appropriation and must, under the decisions, be held to supersede the mere designation of the years at the top of the columns; in other words, the effect of the decisions is, that the provision which is latest in position supersedes the other.

Sutherland on Statutory Construction, Sec. 349, p. 668.

Farmers Bank vs. Hale, 59 N. Y., 53.

Weaver vs. Davidson county, 59 S. W., 1107.

In the case of the Farmers Bank vs. Hale, cited above, it was held that the second section of an act declared an intention directly opposed to the express provisions of the first section. The court in passing upon the question said:

"When different constructions may be put upon an act, one of which will accomplish the purpose of the Legislature and the other render it nugatory, the former should be adopted; but when the provisions of an act are such that to make it operative would violate the declared meaning of the Legislature, courts should be astute in construing it inoperative. The second question was treated in the nature of a proviso and controlling the previous section."

We append here a list of authorities in support of the proposition relied upon.

Parker vs, Ry. Co., 19 Pa. St. Rep., 219.

Gibbons vs. Brittenum, 56 Miss., 250.

Hand vs. Stapleton, 135 Ala., 162.

Ryan vs. The State, 5 Neb., 282.

In the case of Hand and others vs. Stapleton, cited above, the question was the construction of an act authorizing the removal of the county seat. It appeared from a consideration of the law under construction, that there was a contradiction between the last section of the act and the previous section. In passing upon the question, the Supreme Court of Alabama said:

"While it is true, as we have said, the first section of the act provides for the unconditional removal of the county seat, the tenth makes the removal conditional and must control. The rule is, as between conflicting sections of the same act, the last in the order of arrangement will control."

In the Gibbons case, supra, the matter under consideration was conflicting sections in the code of Mississippi. In passing upon the question, the court followed the rule here invoked, saying:

"Differences of time are to be disregarded in construing a code, if by disregarding them and looking at the work as whole harmony can thereby be produced; but if this proves impossible, if, after exhausting every scheme of reconciliation, there still remains a palpable and irrepressible conflict, we are compelled in the absence of anything else indicative of the legislative will, to determine it by adopting its latest declaration. * * *

"It is a well settled rule of interpretation that although the subsequent statute be not repugnant in all its provisions to a prior one, yet if the later statute was clearly intended to prescribe the only rule that should govern in the case provided for, it repeals the original act."

(Swann vs. Buck, 40 Miss., 308.)

"The sections of the code giving the widow one-half prescribed a rule of division of the estate of the intestate different from and repugnant to that which gives her the entire estate and being later in date, must repeal it. So fundamental is the canon of construction which makes the later expression overrule the former one that it is well settled when the later clauses of the same section or of the same will destroy preceding ones, with which they are in conflict. Potters Dwar. on Stat., 156, Note; 9 Bac. Ar. Tit. Stat. d., 277; Harrington vs. Trustees, 10 Wend., 550.

"If a later clause of a will qualified a preceding one, both can stand, but if the passages cannot be reconciled, the later must prevail, if it is equally relative to the testator's primary intention. O'Hara on Wills, Chap. 2, Sec. 11."

In the directions following the statement of the amount of money appropriated which the Governor crossed out, but which the Supreme Court has held he could not and did not veto, specific directions are found for the expenditure of money for the period of two years, as has been shown by several illustrations quoted therefrom, but which will appear more fully by reference to the bill itself, all showing that the funds specified as appropriated were to be spent during the period of two years. It will be found, too, that the period of time is written out in words and not specified

in figures as is specified at the column headings referred to and by which it has been claimed that the period of appropriation of this act is limited. It is a well known rule of construction that words when written out must prevail over figures when they have reference to the same subject matter. This is a rule followed generally in the commercial business, notably with banks in cashing checks and vouchers. It is equally a rule of law in construing written instruments. The general rule of construction is that where there is a conflict between words and figures, the words must prevail.

Weaver vs. Davidson Co., supra.
Warder vs. Millard, 8 Lea., 531.
Payne vs. Clark, 19 Mo., 152.

The rule we have here invoked with reference to the later clauses in the appropriation act controlling matter previously stated by the years as designated at the column headings, is a well-known rule in construction of laws, the rule being based upon the proposition that in the reading of a subject, matter near the close may be presumed to receive the last consideration, and if assented to, is a later conclusion. Slight circumstances preponderate when a question is at equipose. (Sutherland on Statutory Construction, Sec. 349, p. 669.)

Another Construction of the Veto.

We desire here to call your attention to a construction of veto messages, which has been approved, and which we think, in effect, is the same as the construction placed upon the veto of the Governor in this particular instance. It seems to us that the proper construction of the opinion of the Supreme Court in the case of Fulmore vs. Lane is, that while the Legislature made an appropriation of $83,160 to the Attorney General's Department, that the Governor cut this appropriation in two, so that finally it was only $41,580. This, as we have previously said, is undoubtedly the effect and holding of the Supreme Court of the State. There was, of course, but one appropriation for the Attorney General's Department, and the effect of the Governor's action was to cut this appropriation in half. So that by whatever principles of reason one may pursue, the final conclusion must be that the effect of the Governor's veto was to reduce the original appropriation by one-half. This veto has been approved by the Supreme Court of this State, nor is this position without additional authority to support it.

In the case of Commonwealth vs. Barnett, 199 Pa., 162, the question under review was an appropriation bill which had been vetoed in part by the Governor. The Constitution of Pennsylvania is similar to our own, which authorizes the Governor to disapprove any item or items of any bill making appropriations of money, embracing distinct items, etc. The appropriation bill, when submitted to the Governor, made an appropriation of $11,000,000 for two years for the support of the public schools of the commonwealth of Pennsylvania. The Governor approved the appropriation to the extent of ten million dollars and disapproved one million dollars thereof. The Governor of Pennsylvania, in passing upon this appropriation bill, said:

"I am compelled to reduce the appropriation to the common schools $500,000 a year, amounting to $1,000,000 in two years. * * *

"The authority of the Governor to disapprove part of an item is doubted, but several of my predecessors in office have established precedents by withholding their approval from part of an item and approving other parts of the same item. Following these precedents, and believing that the authority which confers the right to approve whole of an item necessarily includes the power to approve part of the same item, I, therefore, approve of so much of this item which appropriates $5,000,000 annually, making $10,000,000 for the two years beginning June 1, 1899, and withhold my approval from $500,000 annually, making $1,000,000 for the two school years beginning June 1, 1899."

The above and foregoing are substantially the facts upon which the opinion of the court in the case named is based. The court held that the Governor had the right to execute the veto as he did execute it and that the appropriation was reduced from $11,000,000 to $10,000,000.

In view of this authority and in view of the holding of the Supreme Court of this State, which in effect in this particular instance is the same as that of the Pennsylvania court, it would not be proper for this department to give any other interpretation to the effect of the Governor's veto.

Another Rule of Construction.

It has been noted that when the Governor vetoed that particular part of the appropriation bill referred to, he returned the bill to the Legislature; that the Legislature declined and refused to pass the original measure over the Governor's veto. Therefore, to that extent it made the Governor's action a part of its own action, or rather it approved the action of the Governor, after their attention had been directed to the matters pointed out in the Governor's veto message. Certainly it cannot be for a moment contended that the Legislature by acquiescing in the Governor's veto intended that there should be no appropriation for the Attorney General's Department for the year 1913. It must be presumed that the Legislature, and every member thereof, intended to perform his constitutional duty and to make an appropriation for the Attorney General's Department for two years. So, then, we have this rule of construction to enable us to determine the meaning of the appropriation bill as passed by the Legislature, as vetoed by the Governor, and as it finally existed when the Legislature declined to pass it over his veto. The rule referred to is the construction which the executive and legislative departments have placed upon a measure of their own enactment. It is an elementary rule that the courts will follow the construction of a statute which has been adopted by the Legislature, unless it is repugnant to sound rules of construction or the plain letter of the act.

Ex parte Rodriguez, 39 Texas, 705, 768.

Snyder vs. Compton, 87 Texas, 374.

"Where the construction of the Legislature occurred contemporaneously with the adoption of the Constitution and by those who had an opportunity to understand the intention of the instrument, it is not to be denied that a strong presumption exists that the construction rightly interprets the intention."

State vs. McAlister, 88 Texas, 284.
Bagby vs. Bateman, 50 Texas, 446.
Smith vs. McGaughey, 87 Texas, 61.
Holmes vs. State, 44 Texas, 631.
Cook vs. Brown, 45 Texas, 73.

By a review of the Supreme Court decisions of this State, the appropriation act and the Governor's veto has been before the Supreme Court of this State, but this particular feature of it has not been construed, because it was not before the court. However, the Supreme Court of the State, in passing upon the question in the opinion of Judge Brown, 140 S. W., page 1082, said:

"We agree that the question whether the excess, if any, of the appropriation for 1911-1912 will be available in the succeeding year is not properly before this court; that question has not been decided, and no intimation to that effect was intended to be expressed in the former opinions. It is not the province of this court to decide upon rights which have not been presented to us, or upon questions which would in no way contribute to the proper determination of the issues presented here."

Then the court adds:

"The veto message being expressed in plain language, we must derive the meaning and effect of the veto from the language used by the Governor." (140 S. W., p. 1083.)

So it appears from the foregoing that the Supreme Court of the State has not passed upon the question here submitted, and we feel entirely at liberty to give that construction which appears to us to be reasonable and which from every consideration appears to have been the intention of the Legislature and of the Governor in performing their several duties in reference thereto. The construction we give is:

1. In harmony with the Governor's message calling the Legislature together to make an appropriation for two years.
2. It is in harmony with the caption of the appropriation bill.
3. It is in harmony with the first section of the bill.
4. It is in harmony with the bill as it passed the Legislature before reaching the Governor.
5. It is in harmony with the Governor's veto message which expressly stated the effect and purpose of the message.
6. It is in harmony with the express language of the appropriation bill after the same was vetoed.
7. It is in harmony with the necessities of the public service and with the belief that it was the intention of the Legislature to perform its constitutional duty.
8. It is not in conflict with the decision of the Supreme Court of this State.
9. It is in harmony with the opin-

ion of the Supreme Court of Pennsylvania in the Barnett case cited above.

10. It is in harmony with other items of appropriation in other Departments, as for instance under the appropriation for the Department of Insurance and Banking we find the following item:

"Office furniture, including shelving, one typewriter and calculating machine, to be expended in two years, $1000"; the figures "$1000" being placed in the column at the top of which is "for the years ending August 31, 1912."

In the Department of Education we find the following:

"For the support of public free schools for two years all the available free school fund arising from the interest or lease of school lands, interest on bonds, school taxes and all other sources of revenue to said fund," leaving the amount thereof blank as to the columns headed by the years ending August 31, 1912, and August 31, 1913.

So we might cite other instances of appropriations being made for two years embraced in a single item, although the item itself is placed under the 1912 column. In other words, the mere fact that the item of the appropriation is placed under either one or the other of the columns ought not to be the sole controlling factor in determining the purpose and intent of the Legislature, but is only to be considered as one of the factors, and if it be apparent from the bill that it was not intended as a limitation prohibiting the amount therein specified from being spent in another year, then, of course, it ought not to be so considered; and, under the rules of construction shown, the intent must be determined from the whole measure, not only from the language used, but from the purpose to be effectuated.

In Conclusion.

We, therefore, conclude, and we do not believe there is any other reasonable conclusion possible to be reached, that the unexpended portion of the appropriation made by the First Called Session of the Thirty-second Legislature for the Attorney General's Department is available for the year 1913, and that it was so intended to be by the Legislature and by the Governor in the performance of their several duties relative to the enactment of the law, and that any other construction would do violence to their intention and do violence to the presumption that the Legislature and the Governor intended to and did perform their constitutional duties.

Respectfully submitted,
C. M. CURETON,
First Office Assistant Attorney General.

This opinion has been passed upon, approved by the Department in executive session, and is now ordered recorded.

B. F. LOONEY,
Attorney General.